

1 RICHARD MESCON, ESQ.
2 New York Bar No. 1434968 (*pro hac vice*)
3 SHERLI FURST, ESQ.
4 New York Bar No. 4783577 (*pro hac vice*)
5 MICHAEL A. KOLCUN, ESQ.
6 New York Bar No. 5054127 (*pro hac vice*)
7 ROBINS KAPLAN LLP
8 601 Lexington Avenue, Suite 3400
9 New York, New York 10022-4611
10 Telephone: (212) 980-7400
11 Facsimile: (212) 980-7499
12 Email: RMescon@RobinsKaplan.com
SFurst@RobinsKaplan.com
MKolcun@RobinsKaplan.com

13 JAMES PATRICK SHEA, ESQ.
14 Nevada Bar No. 405
15 SCOTT D. FLEMING, ESQ.
16 Nevada Bar No. 5638
17 ARMSTRONG TEASDALE LLP
18 3770 Howard Hughes Parkway, Suite 200
19 Las Vegas, Nevada 89169
20 Telephone: 702.678.5070
21 Facsimile: 702.878.9995
22 Email: jshea@armstrongteasdale.com
sfleming@armstrongteasdale.com

23 *Counsel for Plaintiff, Sonoro Invest S.A.*

24 **UNITED STATES DISTRICT COURT**
25 **DISTRICT OF NEVADA**

26 SONORO INVEST S.A., a Panamanian
27 corporation,

Case No. 2:15-cv-2286

28 Plaintiff,
1 vs.
2 ROBERT MILLER, an individual; ANDREW
3 SHERMAN, an individual; COSTAS TAKKAS, an
4 individual; and STEPHEN GOSS, an individual,
5 Defendants
6 and
7 ABAKAN, INC., a Nevada corporation,
8 Nominal Defendant.

**STIPULATION FOR DISCOVERY OF
HARD COPY AND
ELECTRONICALLY STORED
INFORMATION**

1 Plaintiff Sonoro Invest S.A. (“Sonoro”) and Defendant Andrew Sherman (“Sherman”)
 2 (collectively, the “Parties”), by and through their respective counsel, hereby stipulate to the discovery
 3 of hard copy and electronically stored information as follows:

4 **I. ESI Production.**

5 Electronic data should be provided in the following format:

6 A. *TIFFs.* Single-page 300 dpi CCITT Group IV black and white TIFFs should be provided,
 7 with page break information in load file identifying document start and end.

8 Conversion of Excel documents (redacted Excels to be produced in TIFF): When Excel files
 9 are converted to TIFFs, any hidden Rows, Cells or Columns will be unhidden in the version
 10 that will be converted, printing will be done over then down, and print settings will be set to
 fit to page to ensure no text is cutoff. Autodates in headers or footers should reflect the date
 last modified.

11 Conversion of PowerPoint documents: When PowerPoint documents are converted to TIFFs,
 12 the version that will be converted will show the speaker notes, to the extent that they exist.

13 Conversion of Word documents: When Word documents are converted to TIFFs, the version
 14 that will be converted is as it was last saved by the custodian. This means that if it was last
 15 saved with track changes turned on that the images and metadata will reflect the track
 changes.

16 B. *Color.* ESI containing color will be provided in color in JPG format. Parties will
 17 accommodate reasonable requests for production of specific images in color.

18 C. *Database Load Files/Cross-Reference Files.* Documents should be provided with (1) a
 19 Concordance delimited file and (2) an Opticon delimited file.

20 Example of Opticon Delimited File:

21 ABC0000001,ABC001,D:\IMAGES\001\ABC0000001.TIF,Y,,,3
 22 ABC0000002,ABC001,D:\IMAGES\001\ABC0000002.TIF,,,,
 23 ABC0000003,ABC001,D:\IMAGES\001\ABC0000003.TIF,,,,
 24 ABC0000004,ABC001,D:\IMAGES\001\ABC0000004.TIF,Y,,,2
 25 ABC0000005,ABC001,D:\IMAGES\001\ABC0000005.TIF,,,,

26 Example of Concordance Delimited File :

27 ¶BegDoc¶¶EndDoc¶¶AttachRange¶¶Custodian¶

1 The objective coding and/or electronic file metadata should be provided in the following
 2 format:

3 1. Fields should be delimited by the default Concordance field delimiter for ANSI
 4 character 020 ().
 5 2. String values within the fields file should be enclosed with a text delimiter (p).
 6 3. The first line should contain objective coding and or electronic file metadata
 7 headers and below the first line there should be exactly one line for each
 8 document.
 9 4. Each row of objective coding and/or electronic file metadata must contain the
 10 same number of fields as the header row.
 11 5. Multi-values should be separated by a semicolon ASCII character 059 (;).

12 D. *Text Files.* For each document, a document-level text file should be provided in addition to
 13 the TIFFs. The text of native files should be extracted directly from the native file and each
 14 text file will be named using its corresponding image files (e.g., ABC0000001.TXT).
 15 Documents for which text cannot be extracted will be produced with OCR.
 16 E. *Redactions.* With respect to documents containing redacted text, no text will be provided for
 17 the redacted portion. OCR will be provided for the un-redacted portions of the documents.
 18 F. *Unique IDs.* Each image should have a unique file name which will be the Bates number of
 19 that page. The Bates number must appear on the face of the image in the lower right corner
 20 (e.g., ABC0000001.TIF).
 21 G. *Unique Documents.* Parties agree to use a verifiable, de-duplication process designed to
 22 achieve only one unique copy of an email from each custodian is produced. An all custodians
 23 field (or duplicate custodians field) will be provided with each production and updated as
 24 needed.
 25 H. *Metadata Fields.* No metadata will be produced for redacted text. For any document
 26 containing redacted text, metadata will be produced only for the un-redacted text.

27 Metadata pertaining to time/date will be maintained in *Eastern Standard Time (EST)*.

28 The following metadata fields should be provided if they exist:

29 Custodian
 30 Create Date/Time
 31 Last Modified Date/Time
 32 Email Date/Time Sent
 33 MD5 – Hash Value (or similar)
 34 To
 35 Email From /Author
 36 CC
 37 Subject
 38 File extension
 39 BegBates
 40 EndBates

Attach_Range
File Name
OriginalFolderPath

Additionally, the following information will be included:

Native_Path (native file link)
OCR_Text path (path to OCR/extracted text on disk)
Parent-child relationships (attachment information)

I. *Native Format.* The parties have agreed that the following documents will be produced in native format: Excel files, Access files, Microsoft Project files.

The parties reserve their rights to seek additional electronic documents in their native format.

J. *Databases.* Certain types of databases are dynamic in nature and will often contain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Thus, a party may opt to produce relevant and responsive information from databases in an alternate form, such as a report or data table. These reports or data tables will be produced in a static image format. To the extent that relevant and responsive reports or data tables derived from a database were also maintained in static form (e.g., as a PDF attachment or a hard copy in a file), those documents will be produced as static images consistent with the specifications for production of paper.

The parties agree to identify the specific databases, by name and platform or engine (e.g. Oracle, SQL), that may contain responsive information.

K. *Non-Convertible Files:* Certain types of files such as system, program, video and sound files may not be amenable to conversion into anything meaningful in TIFF format. Responsive, non-convertible files will be produced in the form of a placeholder TIFF image. Some examples of file types that may not convert include file types with the following extensions: *.ai *.aif *.bin *.cab *.chi *.chm *.com *.dll *.eps *.exe *.exp *.hlp *.hqx *.idb *.ilk *.iso *.ivi *.ivt *.ix *.lib *.mpeg *.mpg *.mov *.mp3 *.mpe *.msi *.nls *.obj *.ocx *.opt *.pdb *.pch *.psd *.psp *.ram *.res *.rm *.rmi *.sys *.swf *.snd *.tlh *.tmp *.trg *.ttf *.vbx *.wav *.wmv *.wma *.wpg *.xfd

Other files may not be able to be converted to TIFF due to password protection or corruption (for example). If reasonable efforts to obtain useful TIFF images of these files are unsuccessful, these non-convertible files will also be accounted for with a TIFF placeholder.

Nothing in the non-convertible file section is meant to include productions of data produced from databases.

Non-convertible files will be produced natively and with a placeholder TIFF image. Each TIFF placeholder will contain the endorsed bates number and endorsed confidentiality designation. File name and extension will be included as a metadata field.

L. *Gaps.* Productions should contain sequential bates numbers with no gaps. There should be no gaps in bates numbers between productions. A unique production volume number will be

1 used for each production. If any unavoidable gaps occur, the parties agree to provide advance
 2 notice of those gaps within productions and/or between productions.

3

4 M. *Parent-Child Relationships.* Parent-child relationships (the association between an attachment
 5 and its parent document) must be preserved.

6 N. *Search Terms/Date Ranges.* In an attempt to minimize e-discovery costs and disputes, the
 7 parties agree to use search terms to identify the relevant ESI. Further, the parties agree to
 8 disclose and agree upon the search terms before any searches are conducted.

9 O. *Costs.* Each party shall bear its own costs of producing relevant electronic documents in its
 10 possession or control.

11 **II. Hard-Copy Production.**

12 Hard-copy documents should be provided in the following format:

13 A. *TIFFs.* Single page 300dpi CCITT Group IV black and white TIFFs should be provided with
 14 page breaks in the load file identifying document start and end.

15 B. *Color.* Documents containing color will be provided in color in JPG format. The parties will
 16 accommodate reasonable requests for production of specific images in color. However, for
 17 any document that will lose meaning or will be illegible if produced in black and white,
 18 parties agree to produce those documents in color.

19 C. *Unique IDs.* Each image should have a unique file name that will be the Bates number of that
 20 page. The Bates number must appear on the face of the image in the lower right corner (e.g.,
 21 ABC000001.TIF).

22 D. *Gaps.* Productions should contain sequential bates numbers with no gaps. There should be no
 23 gaps in bates numbers between productions. A unique production volume number will be
 24 used for each production. If any unavoidable gaps occur, the parties agree to provide advance
 25 notice of those gaps within productions and/or between productions.

26 E. *OCR.* Document level OCR text files will be provided. Each file will be named using the
 27 bates number of the first page of the document (e.g., a four page document that starts with
 28 ABC000001 will bear the name ABC000001.TXT).

F. *Redactions.* With respect to documents containing redacted text, OCR will be provided for the
 non-redacted text.

G. *Unitizing of Documents.* When scanning paper documents, distinct documents should not be
 merged into a single record, and single documents should not be split into multiple records
 (i.e., paper documents should be logically unitized). The parties will make their best efforts to
 have their vendors unitize documents correctly and will commit to address situations where
 there are improperly unitized documents.

H. *Database Load Files/Cross-Reference Files.* Documents should be provided with (1) a
 Concordance delimited file and (2) an Opticon delimited file.

1 Example of Opticon Delimited File:

2 ABC0000001,ABC001,D:\IMAGES\001\ABC000001.TIF,Y,,,3
 3 ABC0000002,ABC001,D:\IMAGES\001\ABC000002.TIF,,,,
 4 ABC0000003,ABC001,D:\IMAGES\001\ABC000003.TIF,,,,
 5 ABC0000004,ABC001,D:\IMAGES\001\ABC000004.TIF,Y,,,2
 6 ABC0000005,ABC001,D:\IMAGES\001\ABC000005.TIF,,,,

7 Example of Concordance Delimited File :

8 þBegDocþþEndDocþþCustodianþ

9 The objective coding and/or electronic file metadata should be provided in the following
 10 format:

- 11 1. Fields should be delimited by the default Concordance field delimiter for ANSI
 character 20 () .
- 12 2. String values within the fields file should be enclosed with a text delimiter (þ).
- 13 3. The first line should contain objective coding and or electronic file metadata
 headers and below the first line there should be exactly one line for each
 document.
- 14 4. Each row of objective coding and/or electronic file metadata must contain the
 same number of fields as the header row.
- 15 5. Multi-values should be separated by a semicolon (;).
- 16 I. *Parent-Child Relationships.* Parent-child relationships (the association between an attachment
 and its parent document) must be preserved.
- 17 J. *Objective Coding Fields.* The following objective coding fields should be provided to the
 extent determinable: (i) Beginning Bates Number; (ii) Ending Bates Number; (iii) Custodian.

18 **III. Miscellaneous Production Items**

- 19 A. Production Labels. The parties agree to attach a label to each piece of media containing
 production data. The label will provide the following information:

20 Party v. Party (case name)
 21 Case No. 000000 (case number)
 22 Month, Day, Year (date production was created on the disk)
 23 Volume Number
 24 Bates Range: (no gaps from production to production and no gaps within productions
 25 unless otherwise notified)
 26 Confidential Designation (if necessary)

- 27 B. Production Media. Documents will be produced on CD-ROM or DVD disks or on portable
 hard drives or via any secured file transfer method. All portable hard drives and disks will be
 encrypted.

1 **IV. Inadvertent Production of Documents.**

2 Inadvertent production of any document produced in response to discovery requests in this
3 action by any party or non-party, that a party or non-party later claims should have been
4 withheld on grounds of a privilege, including the work product doctrine (collectively referred
5 to hereinafter as an “Inadvertently Produced Privileged Document”) will not be deemed to
6 waive any privilege or work product protection.

7 A party or non-party may request through counsel the return of any document (“Notice of
8 Recall”) that it inadvertently produced by identifying the Inadvertently Produced Privileged
9 Document and stating the basis for withholding such document from production within ten
10 (10) business days of discovery of the inadvertent production. Once the Notice of Recall is
11 given by the producing party, the receiving party shall promptly return all copies of the
12 document or confirm in writing that all copies have been destroyed. The producing party will
13 send a replacement disk containing all non-privileged documents that were contained on the
14 original production disk. Electronic copies of the Inadvertently Produced Privileged
15 Document will be removed from the electronic system of the receiving party. The producing
16 party shall add the subject document to its privilege log and provide the updated Privilege
17 Log to the receiving party. If the Inadvertently Produced Privilege Document requires
18 redaction only, the producing party shall within thirty (30) days of the Notice of Recall,
19 provide to the receiving party a redacted version of the document and an updated privilege log
20 by submitting a replacement disk containing the original production with the redacted
21 documents included. The return of an Inadvertently Produced Privilege Document does not
22 preclude the receiving party from disagreeing with the designation of the document as
23 privileged or redacted and re-produced and bringing a Motion to Compel its production
24 pursuant to the Federal Rules of Civil Procedure.

25 If the Notice of Recall is made during or in preparation for a deposition, the examining and
26 defending counsel shall meet and confer at the earliest opportunity to determine appropriate
27 steps under this circumstance and consistent with this Agreement to return the document,
28 redact the document, or withdraw the claim of privilege.

1 Dated: March 31, 2016
2

3 By: /s/ Michael A. Kolcun

4 Richard Mescon, Esq. (*pro hac vice*)
5 Sherli Furst, Esq. (*pro hac vice*)
6 Michael A. Kolcun, Esq. (*pro hac vice*)
7 Robins Kaplan LLP
8 601 Lexington Avenue, Suite 3400
9 New York, New York 10022-4611
10 Telephone: (212) 980-7400
11 Facsimile: (212) 980-7499
12 RMescon@RobinsKaplan.com
13 SFurst@RobinsKaplan.com
14 MKolcun@RobinsKaplan.com

15 James Patrick Shea, Esq.
16 Scott D. Fleming, Esq.
17 Armstrong Teasdale LLP
18 3770 Howard Hughes Parkway, Suite 200
19 Las Vegas, NV 89169
20 Main: (702) 678-5070
21 Direct: (702) 473-7079
22 Cellular: (702) 743-6263
23 JShea@ArmstrongTeasdale.com
24 SFleming@ArmstrongTeasdale.com

25 *Attorneys for Plaintiff, Sonoro Invest S.A.*

26 /s/ Andrea M. Champion

27 Patrick J. Reilly, Esq. (6103)
28 Andrea M. Champion, Esq. (13461)
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
preilly@hollandhart.com
amchampion@hollandhart.com

1 Dated: March 31, 2016
2 By: /s/ Christina C. Tizzano

3 Christina C. Tizzano, Esq. (*pro hac vice*)
4 The Chilcote Law Firm LLP
5 The Cedar-Grandview Building
6 12434 Cedar Road, Suite Number 3
7 Cleveland Heights, Ohio 44106
8 Telephone: (216) 795-4117
9 Facsimile: (216) 795-4245
10 christina.tizzano@chilcotelaw.com

11 *Attorneys for Defendant Andrew J. Sherman*

12 **ORDER**

13 It is so ordered.

14 DATED: April 1, 2016

15 
16 United States Magistrate Judge